

DEC 09 2019



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

CERTIFIED MAIL 7012 2210 0000 1205 9310
RETURN RECEIPT REQUESTED

Mr. Jacky Lau, Executive Director
K 2 Motor Corp. dba Spec-D Tuning
21901 Ferrero Pkwy.
City of Industry, CA 91789

Re: Notice of Violation of the Clean Air Act

Dear Mr. Lau:

The United States Environmental Protection Agency (EPA) has investigated and continues to investigate K 2 Motor Corp. dba Spec-D Tuning, (K 2 Motor) for compliance with section 203(a) of the Clean Air Act (CAA), 42 U.S.C. § 7522(a), and its implementing regulations. As detailed in this Notice of Violation (NOV), the EPA has determined that K 2 Motor sold parts or components for motor vehicle engines that bypass, defeat, or render inoperative devices or elements of design of motor vehicles that were installed by the original equipment manufacturer to enable the motor vehicles to comply with the CAA emission standards. EPA has also determined that K 2 Motor knew, or should have known, that these parts or components were offered for sale or installed for such use or put to such use. Therefore, K 2 Motor violated section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

Law Governing Alleged Violations

This NOV arises under Part A of Title II of the CAA, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. These laws were enacted to reduce air pollution from mobile sources of air pollution. In creating the CAA, Congress found, in part, that “the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare.”¹ Congress’ purpose in creating the CAA, in part, was “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population,” and “to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution.”²

The CAA defines a “motor vehicle” as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” Section 216(2) of the CAA, 42 U.S.C. § 7550(1). In addition, the exclusion and exemption of motor vehicle and motor vehicle engine regulations clarify that

¹ CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2).

² CAA § 101(b)(1)–(2), 42 U.S.C. § 7401(b)(1)–(2).

[f]or the purpose of determining the applicability of section 216(2) of the CAA, a vehicle which is self-propelled and capable of transporting a person or persons or any material or any permanently or temporarily affixed apparatus shall be deemed a motor vehicle, unless any one of more of the criteria set forth below are met, in which case the vehicle shall be deemed not a motor vehicle: (1) The vehicle cannot exceed a maximum speed of 25 miles per hour over level, paved surfaces; or (2) The vehicle lacks features customarily associated with safe and practical street or highway use, ... ; or (3) The vehicle exhibits features which render its use on a street or highway unsafe, impractical, or highly unlikely. . . .

40 C.F.R. § 85.1703.

The CAA makes it a violation

for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.

CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1854-12(a)(3)(ii). It is also a violation to cause any of the foregoing acts. CAA § 203(a), 42 U.S.C. § 7522(a); 40 C.F.R. § 86-1854-12(a).

EPA Certification Program

EPA administers a certification program to ensure that every vehicle introduced into U.S. commerce satisfies applicable emission standards. Under this program, EPA issues certificates of conformity (COCs), and thereby approves the introduction of motor vehicles into U.S. commerce. To obtain a COC, a motor vehicle manufacturer must submit a COC application to the EPA for each test group of vehicles that it intends to enter into U.S. commerce. 40 C.F.R. § 86.1844-01. Motor vehicle manufacturers employ many devices and elements of design to meet emission standards to obtain COCs. "Element of design" means "any control system (*i.e.*, computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine." 40 C.F.R. §§ 86.094-2 and 86.1803-01. For example, manufacturers employ certain hardware devices as emission control systems to manage and treat exhaust to reduce levels of regulated pollutants from being created or emitted into the ambient air. For gasoline-fueled vehicles, these devices include use of a catalytic converter.

Factual Background

K 2 Motor manufactures, advertises, and sells certain parts or components for use on light-duty motor vehicles that are manufactured by Honda Motor Corporation (Honda), General Motors Company (GM), Ford Motor Company (Ford), Volkswagen Group of America, Inc. (VW), and Subaru Corporation (Subaru), which bypass, defeat, or render inoperative a device or element of design that is used to

control emissions on the motor vehicle. The parts and components that are the subject matter of this NOV are exhaust systems that are used to eliminate a catalytic converter. The catalytic converter is a primary emission control component that is used to reduce toxic byproducts of burning fuel (e.g., nitrogen oxides, carbon monoxide, and hydrocarbons) to less hazardous byproducts such as carbon dioxide, water vapor, and nitrogen gas.

On September 6, 2018, pursuant to section 208 of the CAA, EPA issued to K 2 Motor an Information Request concerning, among other things, the exhaust parts and components that K 2 Motor offered for sale or sold since January 1, 2017, through the date of the letter. In April 2019, EPA received an incomplete response to the Information Request. On May 13, 2019, EPA requested via email a complete response to the Request. Based on K 2 Motor's response, dated June 28, 2019, to the Information Request, EPA makes the following determinations:

1. As described in the enclosed Table, between January 1, 2017, and September 6, 2018, K 2 Motor offered for sale and sold 3,818 exhaust systems in violation of the CAA. These exhaust systems are used to bypass, defeat, or render inoperative the catalytic converter on certain light-duty motor vehicles (the Subject Exhaust Systems). The Subject Exhaust Systems include exhaust manifold headers, downpipes, and test pipes.
2. K 2 Motor manufactures, advertises, and/or sells the Subject Exhaust Systems, depending on the motor vehicle's make and model, for use on 1988 to current model year motor vehicles that are manufactured by Honda, GM, Ford, VW, and Subaru.

Alleged Defeat Device Violations

The Subject Exhaust Systems function as defeat devices by replacing and therefore rendering inoperative the motor vehicle's original exhaust system which included a catalyst to control emissions. K 2 Motor's response to the Information Request included exhaust system diagrams with notations indicating where the replaced exhaust system bypasses or deletes the catalytic converter on the OEM exhaust system. K 2 Motor labeled these sections of the replaced exhaust system, "Replaced Portion Passes Cat," which means the aftermarket part bypasses the catalyst. For example, the diagram for part MHF-CV92-V2-RS, for the 1999 Honda Civic EX L4 1.6, indicates the replaced portion which bypasses or deletes the catalytic converter on the OEM exhaust system.

Due to the design and purpose of the Subject Exhaust Systems as shown by K 2 Motor's response to the Information Request, K 2 Motor knew, or should have known, that the Subject Exhaust Systems were offered for sale or sold in order to bypass, defeat, or render inoperative devices or elements of design that control emissions of regulated air pollutants.

Each of the Subject Exhaust Systems functions as a defeat device by bypassing, defeating, or rendering inoperative the motor vehicle's catalytic converter. Specifically, the Subject Exhaust Systems are used to replace the section of exhaust where the catalytic converter should be. In addition, all of the Subject Exhaust Systems manufactured or sold by K 2 Motor were designed and marketed for use on specific makes and models of Honda, GM, Ford, VW, and Subaru light-duty vehicles. Honda, GM, Ford, VW, and Subaru sought and obtained COCs from the EPA for these motor vehicles and engines. This certification unequivocally demonstrates that these vehicles and engines are "motor vehicles" and

“motor vehicle engines” under the CAA. K 2 Motor knew, or should have known, that the Subject Exhaust Systems were manufactured, offered for sale or sold in order to bypass, defeat, or render inoperative devices or elements of design that control emissions of regulated air pollutants from a motor vehicle or motor vehicle engine. K 2 Motor’s sale of the Subject Exhaust Systems between January 1, 2017, and September 6, 2018, constitutes 3,818 separate violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

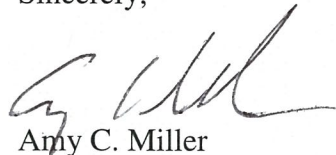
Based on the foregoing, K 2 Motor committed 3,818 violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), by offering for sale and selling 3,818 Subject Exhaust Systems.

Enforcement Authority

The EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the U.S. Department of Justice with a recommendation that a civil complaint be filed in federal district court.³ Persons violating section 203(a)(3)(A) or (B) of the Act, 42 U.S.C. § 7522(a)(3)(A) or (B), are subject to an injunction under section 204 of the Act, 42 U.S.C. § 7523, and a civil penalty of up to \$4,735 for each violation that occurred after November 2, 2015.⁴

The EPA is available to discuss this matter with you in further detail upon your request. Within 14 days of receipt of this NOV, please contact Brian Riedel, the EPA attorney assigned to this matter, at (415) 972-3924 or riedel.brian@epa.gov.

Sincerely,



Amy C. Miller

Director, Enforcement & Compliance Assurance
Division

U.S. Environmental Protection Agency, Region 9

Enclosures: Table

³ CAA §§ 204 and 205, 42 U.S.C. §§ 7523 and 7524.

⁴ CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4. This civil penalty level has been adjusted over time as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended.

TABLE

**K 2 Motor Corp. dba Spec-D Tuning violations of CAA § 203 for the period 1/1/17-9/6/18
for sale of 3,818 Subject Exhaust Systems**

#	Part Number	Part Name	Total Qty Sold
1	HH1-CV01LX-DK	HH1-CV01LX-DK 2005 Honda Civic LX L4 1.7 Exhaust Manifold Header	161
2	HH2T-CV06SI-DK	HH2T-CV06SI-DK 2011 Honda Civic Si L4 2.0 Exhaust Manifold Header	46
3	HH4-CMR98LS-DK	HH4-CMR98LS-DK 2002 Chevrolet Camaro Z28 V8 5.7L Exhaust Manifold Header	25
4	HH4-MST11V8-DK	HH4-MST11V8-DK 2015 Ford Mustang GT V8 5.0L Exhaust Manifold Header	48
5	MDP-GLF99	MDP-GLF99 2004 Volkswagen Golf GTI 1.8L Exhaust Down Pipe	212
6	MDP-WRX02	MDP-WRX02 2006 Subaru Impreza WRX STI 2.5 Exhaust Down Pipe	188
7	MFH-3CV92	MFH-3CV92 1999 Honda Civic EX 1.6L Exhaust System	745
8	MHF-CV92-RS	MHF-CV92-RS 1999 Honda Civic EX 1.6L Exhaust Test Pipe	343
9	MHF-CV92-V2-RS	MHF-CV92-RS 1999 Honda Civic EX 1.6L Exhaust Test Pipe	1,712
10	MHF-ACD90	MHF-ACD90 1990 Honda Accord Sedan Exhaust Test Pipe	338
		Total	3,818